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parties in the case and its use in other cases is limited. R.1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4124-14T3

LAURA L. ODDO,

Appellant,

v.

BOARD OF REVIEW, DEPARTMENT OF
LABOR AND WORKFORCE DEVELOPMENT
and FREEHOLD BOROUGH BOARD OF
EDUCATION,

Respondents.

Submitted September 14, 2016 — Decided December 19, 2016

Before Judges Espinosa and Suter.

On appeal from the Board of Review, Department
of Labor and Workforce Development, Docket No.
032,953.

Laura L. Oddo, appellant pro se.

Christopher S. Porrino, Attorney General,
attorney for respondent (Melissa Dutton
Schaffer, Assistant Attorney General, of
counsel; Nicole M. DeMuro, Deputy Attorney
General, on the brief).

Respondent Freehold Borough Board of Education
has not filed a brief.

PER CURIAM

Laura L. Oddo (claimant) appeals decisions by the Department of Labor and Workforce Development Board of Review (Board) that disqualified her from unemployment benefits under N.J.S.A. 43:21-4(g)(2) and required her to repay the benefits she received. We affirm.

I.

Claimant was a substitute school bus driver during the 2012/2013 school year for the Freehold Borough Board of Education (Freehold Borough). In August 2013, Freehold Borough's Transportation Department was transferred to another entity. Claimant then interviewed with Freehold Regional High School District (Freehold Regional) for a position as an on-call substitute bus driver for the 2013/2014 school year, signed up for their on-call list, and worked in that capacity until June 2014.

At the end of the 2013/2014 school year, Freehold Regional distributed a school calendar for the upcoming 2014/2015 school year, which scheduled a meeting on September 3, 2014 for the bus drivers to return to work. Claimant attended the September 3, 2014 meeting, for which she was paid. The new school year started on September 4, 2014, and claimant attended bus driver training on September 4 and 5, 2014. She began driving a bus for Freehold Regional on September 8, 2014. Claimant remained on Freehold

Regional's on-call substitute bus driver list until November 2014 when she was offered, and accepted, a full-time bus driver position with Freehold Regional.

Claimant filed two claims for unemployment benefits for the summer weeks after the 2013/2014 school year, for which she was paid \$582 from July to August 2014 and \$745 from August to September 2014. However, claimant was notified in September 2014 by the Division of Unemployment Insurance that she was ineligible for unemployment benefits from June 29 to September 6, 2014 because she had a "reasonable assurance of employment in the next school term." She was directed to reimburse the benefits she had received.

Claimant sought a review before the Department's Appeal Tribunal, but on both claims the Appeal Tribunal ruled that claimant had a reasonable assurance of returning to work, which made her ineligible for benefits. The Appeal Tribunal found claimant was on-call as a substitute bus driver during the 2013/2014 academic year "and she was never notified that she would not be recalled as an on-call substitute driver for the 2014/2015 academic year." Even though she had no guarantee of employment, she was notified in June 2014 of a meeting on September 3, 2014, "and if she wanted to remain on the on-call substitute list she

must first attend the meeting." She was not notified she was removed from the list, implying that she would be returning as a substitute driver for the 2014/2015 school year. As long as she had "reasonable assurance" with one educational institution, she was not eligible for benefits between the school years, regardless of her employment with other educational institutions. She was directed to reimburse the benefits received.

The Appeal Tribunal's decision was affirmed by the Board. On appeal, claimant asserts that she was unemployed during the weeks she received benefits and should not have to refund them.

II.

We review the February 11, 2015 decision by the Board to determine whether it is supported by substantial credible evidence in the record. Phila. Newspapers, Inc. v. Bd. of Review, 397 N.J. Super. 309, 318 (App. Div. 2007), certif. denied, 195 N.J. 420 (2008). We will not overturn the Board's decision unless it is so wide of the mark as to be arbitrary, capricious or unreasonable. Brady v. Bd. of Review, 152 N.J. 197, 210 (1997). Our review of the record shows ample support for the Board's conclusion.

To be eligible for unemployment benefits, a person must be "unemployed." N.J.S.A. 43:21-4. Unemployment benefits are not to be paid

on the basis of service performed in [a non-instructional or administrative] capacity for an educational institution . . . to any individual for any week which commences during a period between two successive academic years or terms if such individual performs such services in the first of such academic years or terms and there is a reasonable assurance that such individual will perform such services in the second of such academic years or terms

[N.J.S.A. 43:21-4(g)(2).]

The statute has been held applicable to full-time and substitute teachers. See Patrick v. Bd. of Review, 171 N.J. Super. 424, 427 (App. Div. 1979) (finding that denial of benefits to substitute teachers conformed with the "Legislature's intent not to subsidize the vacation periods of those who know well in advance that they may be laid off for certain specified periods.").

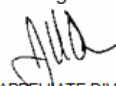
The Department's regulations likewise prohibit employees of an educational institution from receiving unemployment benefits between academic years if the employee has "reasonable assurance" of returning to work the following year. The term "reasonable assurance" is defined as "a written, oral, or other implied agreement that the employee shall perform services in [the same or similar capacity] during the next academic year, term, or remainder of a term." N.J.A.C. 12:17-12.4(a)(1). An employee in a day-to-day substitute position "has reasonable assurance of

recall if he or she is placed on a substitute list for the next academic year or term." N.J.A.C. 12:17-12.4(a)(3). The burden is on the claimant to show she did not have "reasonable assurance." Charatan v. Bd. of Review, 200 N.J. Super. 74, 78-79 (App. Div. 1985).

Here, we discern no error by the Board in its determination that claimant had a reasonable assurance of employment in the next school term. When claimant learned she would not be full-time with Freehold Borough, she applied to Freehold Regional the next day and was put on its on-call list. She served in that capacity throughout the 2013/2014 school year. At the close of that school year, claimant was aware of the date when she needed to report for training for the upcoming school year, attended the meeting, obtained the training and commenced employment, for which she was paid. She did not advise she was unavailable to perform services. She seemed to assume that because she was on-call she was "technically unemployed," when in fact she had reasonable assurance of being on-call for the new school year. Given this, she was not entitled to unemployment benefits and is required to reimburse the benefits she received. See Bannon v. Bd. of Review, 299 N.J. Super. 671, 674 (App. Div. 1997).

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.



CLERK OF THE APPELLATE DIVISION